

## **Remarks**

### **I. Status of the claims**

Claims 2, 4, 5, 9, 13, 18-22 and 32 have been canceled and claims 1, 6-8, 10, 12, and 14-16 have been amended. Accordingly, claims 1, 2, 6-8, 10-12, 14-17, and 23-31 are pending. Claim 1 has been amended to further define the lipid and aqueous phases. Support can be found in the specification at least at page 10, lines 10-16; page 11, lines 1-6; page 12, lines 13-17. Claims 6-8, 10, 12 and 14-16 have been amended to be consistent with and/or properly depend from claim 1. No new matter has been introduced by this amendment.

### **II. Claim Objections**

The Examiner objected to claim 5 because of an obvious typographical error. Claim 5 has been canceled. Accordingly, the objection should be withdrawn.

### **II. Rejections Under 35 U.S.C. § 112**

The Examiner rejected claim 8 as being indefinite for reciting a broad range with a narrow range that falls within the broad range. Applicants have amended claim 8 to recite a single range. Accordingly, Applicants respectfully request withdrawal of this rejection.

The Examiner also rejected claims 20 and 27 as indefinite for the use of parentheses. Applicants have canceled claim 20 and removed the parentheses in claim 27. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **III. Rejection Under 35 U.S.C. § 102(b)**

The Examiner rejected claims 1, 9-19, 23-26, 28-33 under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 6,153,208 ("McAtee"). Applicants respectfully traverse this rejection.

As amended, claim 1 relates to a cosmetic, personal care, or cleansing product comprising an applicator whereto an aqueous and a lipid phase have been applied. The lipid phase contains less than 10% by weight water and comprises at least one oil or wax component comprising (a) at least 70% w/w of C<sub>12</sub>-C<sub>24</sub> fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C<sub>12</sub>-C<sub>50</sub> fatty alcohols; and (c) from about 1 to about

30% w/w of C<sub>14</sub>-C<sub>40</sub> fatty acid. At least one of the lipid phase or aqueous phase contains one or more actives substances selected from the group consisting of anti-microbials, anti-inflammatory agents, anti-irritating compounds, anti-itching agents and anti-perspirant. The aqueous phase is present in an amount of from about 1 to about 10 gram per 1 gram of substrate. The melting point or melting range of the lipid phase is above 25°C, and the lipid phase is present in an amount of from about 0.06 to about 0.8 grams per 1 gram of substrate. The lipid phase is insoluble in the aqueous phase and the lipid phase and said aqueous phase do not form one phase or a continuous phase once on said applicator until used by a consumer as a cosmetic, personal care, or cleansing product.

McAttee relates to a disposable, single use personal care cleansing and conditioning article comprising: (A) a water insoluble substrate, wherein at least a first portion of said substrate is wet extensible and at least a second portion of said substrate is less wet extensible than said first portion, and (B) at least one lathering surfactant added onto or impregnated into the substrate. There is no teaching or suggestion of the specific lipid phase and aqueous phase recited by the present claims, much less a lipid phase containing less than 10% by weight water and at least one oil or wax component comprising (a) at least 70% w/w of C<sub>12</sub>-C<sub>24</sub> fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C<sub>12</sub>-C<sub>50</sub> fatty alcohols; and (c) from about 1 to about 30% w/w of C<sub>14</sub>-C<sub>40</sub> fatty acid. Further, there is no teaching or suggestion in McAttee that the lipid phase should be insoluble in the aqueous phase and that the lipid phase and aqueous phase do not form one phase or a continuous phase once on an applicator until used by a consumer. Accordingly, McAttee fails to anticipate or render obvious the present claims and the rejection should be withdrawn.

#### **IV. Provisional obviousness-type double patenting rejection**

The Examiner has set forth three separate obviousness-type double patenting provisional rejections over co-pending Application Nos. 10/520,952; 10/520,970; and 0/541,950. As the co-pending Applications are still pending, Applicants keep the decision with respect to the obviousness-type double patenting rejection in abeyance until there is further clarity with respect to what claims will be granted in the present application and in the co-pending applications.

**V. Conclusion**

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below. If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J2125USPCTP/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J2125USPCT/JPB.

Respectfully submitted,

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